IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.02.2002

Coram :

THE HONOURABLE MR. JUSTICE P. SHANMUGAM

and

THE HONOURABLE MR. JUSTICE P. THANGAVEL

C.M.A. No.1006 of 1999

V.R. Rajakumaran .. Appellant

vs.

B. Jayalakshmi .. Respondent

PRAYER : Appeal against the order of the Family Court, Madurai dated 19.8.1998 and made in H.M.O.P. No.184 of 1994.

: ORDER

This Appeal coming on for hearing on this day and upon perusing the Memorandum of Appeal, the order of the Lower Court and the material papers in the case, and upon hearing the arguments of Mr. S. Muthuraman for the appellant and of Mr. A.T. Balaji for the respondent, the Court passed the following Judgment :

J U D G M E N T

(Judgment of the Court was delivered by P. Shanmugam, J.)

The unsuccessful petitioner before the Family Court for a divorce under Section 13(1)(i)(a) of the Hindu Marriage Act is the appellant before this court. The appellant had prayed for a decree of divorce mainly on the ground of desertion and other allegations set out in the petition dated 4.3.1993. The respondent filed a counter statement on 6.8.1993 and after considering the oral and documentary evidence, the Family Court Judge dismissed the petition. The present appeal is against this judgment.

2. Both the parties are educated, the husband being a qualified Engineer and the wife working as an Agricultural Officer in a Government Department. The marriage took place on 21.6.1991 as per the customs and religious formalities of their community. A female child was born to them on 21.6.1992. Within a short period, a lawyer's notice was issued dated 14.1.1993 by the appellant/husband setting out the grounds for divorce. The respondent/wife immediately wrote a letter dated 4.1.1993 to the counsel for the appellant requesting him to permit them to live together. Thereafter, she also gave a reply through her counsel on 5.3.1993. The learned Family Court Judge, after considering both the oral and documentary evidence, dismissed the application.

3. We have heard the counsel for the appellant and the respondent, gone through the records and considered the matter carefully.

4. The main grounds urged in support of the petition are that the respondent/wife compelled the appellant/husband to resign his lucrative job as an Engineer at Jamshedpur and made him to come back to Madurai. Thereafter, the respondent was not willing to resign her job as Agricultural Officer and continued to go to office, insisting for a separate residence. When the appellant refused to comply with her request, she started giving troubles by not fulfilling her matrimonial obligations which a wife is expected to do, thereby causing mental agony and cruelty to the appellant. Even after the transfer of the petitioner to Madurai, she did not change her attitude and insisted for a separate residence at Pasumalai where her office is located. The respondent ill-treated the appellant's parents and his close relatives and had not given due respect to them. According to the appellant, she used to tease him on his unemployment in front of his friends and relatives. The respondent used to leave her marital home to her parents' house at Aruppukottai without informing the appellant. She had often threatened the appellant that she is going to commit suicide and was also making false allegations against the appellant's parents that there was a demand of dowry. On 1.2.1992, the respondent left the house taking all her jewels and belonging along with her and did not turn up to his house thereafter. The respondent gave birth to a female child on 21.6.1992, but the birth of the child was not informed to the appellant. Even after the appellant's attempt to go and see the child, the respondent did not change her attitude. In view of the adamant attitude of the respondent in refusing to come and live with the appellant and her insistence to have a separate house, finding no other alternative, the appellant filed the petition seeking divorce on the ground that the respondent had deserted him and alleging mental cruelty.

5. All these allegations are denied by the respondent/wife. She pictures an entirely different story than what had been stated in the petition of the appellant. Her main stand is that the husband has hatched out a case for divorce on the ground of desertion by making necessary ingredients so as to get a decree for divorce with an ulterior purpose. She had made it clear that she is always ready and willing to live with her husband and denied all the allegations contained in the petition. According to her, the appellant had resigned his job on his own and not on her compulsion. Secondly, it is

her specific case that she never agreed to resign her own job. On the contrary, it is the respondent's father who helped her to get a transfer to Madurai. She further says that she was always affectionate to the parents and relatives of the appellant and had not compelled the appellant to have a separate residence as claimed by him. She was taking care of the family and the appellant's parents. After the birth of the female child, the parents of the appellant were disappointed to know that it was a girl child and hence, it is only with an ulterior motive, an allegation that she did not return from her parents' house is made. All the allegations regarding her attempt to commit suicide are, according to the respondent, created for the purpose of the case. On 2.2.1992, she was five months' pregnant. Even prior to that, she was having complaints of giddiness and on one such occasion, she fell down in the kitchen. Her father-in-law as well as the mother-in-law, who were with her, made arrangements to take her to the hospital where she was advised to take rest. Only at their insistence she was taken to her parents' house. She never took back the jewels along with her while leaving for her parents' house except for the usual jewellery which she was wearing. After the birth of the child, there was no quarrel between them. The appellant came and saw the child and he had also brought new clothes for the child and was staying for two days at Aruppukottai. He had given telegram to his parents about the birth of the child. However, they were disappointed to know that the child was a female child and not a male child.

6. Thus, we find that each and every allegation contained in the petition has been denied in detail by the respondent/wife and an entirely new case has been put forward by her. The appellant has also filed a detailed reply affidavit. From the findings of the court below, we find that according to the court below, the main grounds on which the appellant sought for a separation are that the respondent refused to resign her job even though it was agreed to be done prior to the marriage; secondly, the wife forced the appellant to resign his job; thirdly, she wanted to have a separate residence of her own, away from the appellant's family; fourthly, it is alleged that she had been threatening to commit suicide on the ground that she is not allowed to have a separate residence. It is also stated that she is not showing due respect to the appellant's parents. The Family Court found that the wife is always willing to go and live with her husband and if he wants, she is prepared to resign her job. But, it is found that it is the appellant who is not willing to take her back. It is found that the appellant had not established cruelty. The Family Court observed, "The petty trifles and quarrels in an ordinary family should not be taken as a ground for cruelty and divorce. The day-to-day wear and tear of life has been exaggerated to claim divorce". The application was dismissed with costs.

7. The main point for consideration is whether the appellant has made out a case for divorce. The main plea of the appellant in support of his case are :
(i) Compulsion on the part of his wife to resign his lucrative job;
(ii) Refusal of the wife to resign her job;
(iii) Failure to perform her marital obligations;
(iv) Threatening with suicide;

(v) Disrespect to elders; and
(vi) Failure to inform the birth of the child.

We find from the records that the statement that the husband was compelled by the respondent to resign his job cannot be accepted. After the marriage took place on 21.6.1991, both of them left for Jamshedpur and lived there hardly for a month's time and within that one month period, it is very difficult to accept the case of the appellant that the wife had compelled him to resign his job. In his own legal notice, the appellant has stated that the respondent was putting obstacle for improving in his life by requesting for resignation. But, from Ex.R.1, in his alleged interview given to a magazine dealing with industries, along with his photograph, he has stated that he has taken a decision to start his own hosiery industry after resigning his job. He further says that only due to his extreme interest in selfemployment, he had resigned his job wherein he was drawing a salary of Rs.7,000/-. At more than one place, he has mentioned about his selfemployment and his ambition to earn crores of rupees in future years. This is in consonance with the stand of the respondent that even before the marriage, the appellant had decided to resign his job and come back to start his own industry. Therefore, it is too much to ask the court to believe that within one month of the marriage, the wife compelled the appellant to resign his job, come back to Madurai and remain unemployed, on the basis of the self-serving oral testimony. No wife would like her husband to remain unemployed, especially when both the parents are very much interested in having employment. Therefore, the allegation has no substance.

8. The second allegation as found in the petition is that the respondent refused to resign her job after having assured the appellant's family that she would resign the job after marriage. The said allegation also cannot be accepted to be true. In Ex.A.5, the legal notice issued by the appellant, in paragraph 4, he has stated that only with the assistance and the efforts of the appellant's father, the respondent could get a transfer from Paramakudi to Madurai. This shows that the appellant's family was assisting her to get a transfer. Therefore, if really they wanted the respondent to resign from the job, they would have not helped her to get the transfer. The appellant's father was an officer in the Agricultural Department and according to them, it is not in dispute that many of their relatives are employed in Government service and the specific case of the respondent is that they wanted an employed daughter-in-law who is in Government service and therefore, after having known that the respondent is employed in Government service, it is very difficult to be lieve that they would have compelled her to resign as a condition for the marriage. The case of the appellant, as stated, that she had agreed to resign the job after the marriage and thereafter refused to do so is therefore difficult to accept. Further, there is no purpose to resign her job when actually the husband is also unemployed. She had categorically

stated that she is prepared to resign her job if he takes her back. Therefore, on this count also, we are unable to accept the case of the appellant.

9. Thirdly, it is stated that the wife is insisting to have a

separate family and is asking the appellant to come away from his family. As against the legal notice stating that she is trying to have a separate house, she had, on her own, written a letter to the counsel for the appellant wherein she says that she was shocked to receive the legal notice and that she is prepared to live with her loving husband and respected father-in-law and mother-in-law. She further says that she wanted to live with them jointly and requested the counsel to help her in her endeavour. This letter, in our view, appears to be very natural, coming out of the inner feelings of the wife. We have no reason to reject this letter written by the respondent, since admittedly there is no reply to this letter. Thereafter, the respondent has given a detailed reply, countering each and every claim of the appellant 0 that it is the wife who wanted to go for a separate house. In the light of the specific stand and the facts and circumstaces of the case, we find no grounds to accept the case of the appellant that the wife was insisting for a separate house of her own and that this is one of the grounds for cruelty.

10. The marriage was held in January, 1991 and she was five months' pregnant in February 1992. She became sick because of her pregnancy and admittedly she was taken to the hospital and was advised rest and was then taken to her parents' house on her medical leave. After the birth of the child in January 1992, she was refused permission to come back. Therefore, there is no question of her denial of marital obligations towards her husband.

11. It is submitted that the appellant was showing disrespect to the parents of the appellants and his relatives and that she had tried to threaten to commit suicide. In support of this plea, the appellant has let in the evidence of P.Ws. 2, 3 and 4. Admittedly, the witnesses are all either very close relatives or friends of the appellant' s family. Even P.W.2 had stated that when the respondent was questioned about this in the panchayat, she did not reply anything but only stated that she will live peacefully thereafter. P.W.3 is a very close relative of the appellant. P.W.4 is said to be an independent witness, who is living in the house opposite to the appellant's house. As per this deposition, on one particular day, the appellant's mother came to his house and informed him that her daughter-in-law has poured kerosene upon herself and she requested for assistance. They took her to the doctor and got her examined. According to the doctor, it was a suicide case and he requested them to take her to the Government Hospital. The respondent informed that she has only threatened and that she has not poured kerosene when she was asked as to why she did so, being an educated lady. In this case, the doctor was not examined. Further, the case, as stated by P.W.4, appears to be not clear. If really the doctor was examined, it would have been easily found out whether there was actually an attempt to commit suicide either by consuming or pouring kerosene and he would not have asked the patient to be taken to the hospital unless it was true. Admittedly, she was not taken to the hospital. There is inconsistency in the version. The statement of P.W.4 in the cross-examination is not helpful to the appellant. As a matter of fact, he says that he does not know whether there will be any quarrel between the appellant and the respondent and that he does not know why they are living separately. From this, it is clear that a person who is living in the house opposite to the appellant's house in unaware of any problem in the family of the appellant. If the case as spoken to by the

appellant is true, definitely he would have known about it and he would have deposed about the factum of atleast some of the allegations as stated in the petition. The respondent, apart from denying the allegation, says that there was no such incident and that she does not P.W.4. The burden is on the appellant to prove his case. In our view, the appellant had failed to establish this allegation. On the contrary, the finding is, "It is the petitioner who has deserted the respondent". The appellant and his family were upset over the birth of the female child and she had categorically replied to the notice that she wants to live with her husband and family. We

are unable to attach any credence to the case of the appellant. In the light of the discussion as stated above, we are of the view that no case has been made out as alleged.

11. We find that the learned Family Court Judge has gone through the evidence and has, in our view, rightly found that no grounds have been made out to grant the relief sought for in the petition filed by the appellant. Hence, we do not find any ground to interfere with the judgment of the Family Court. The appeal is devoid of any merit and it is accordingly dismissed. No costs.

(P.S.M.J.) (P.T.J.)
12.02.2002.
ab

Sd/..

Assistant Registrar

// TRUE COPY //

Sub Assistant Registrar (C.S.)

To
The Judge,
Family Court,
Madurai.

P. SHANMUGAM, J.
and
P. THANGAVEL, J.

C.M.A. No.1006 of 1999

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